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MONTANA LEGISLATIVE HISTORY

Chapter 581 1991

Bill H 968 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Public Health Welfare & Safety		
Hearing Date(s)	Feb 23	✓ C	Hearing Date(s)	Apr 08	✓ C
Appropriations		C			C
Mar 19 ✓		C			C
Mar 23 ✓		C			C
Mar 25 ✓					
Date Out	Feb 23	✓ C		Apr 09	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SUSTAINING PROCEDURES

2/21	INTRODUCED		
2/21	REFERRED TO JUDICIARY		
2/22	FIRST READING		
2/22	FISCAL NOTE REQUESTED		
2/23	HEARING		
2/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	FISCAL NOTE RECEIVED		
2/25	FISCAL NOTE REQUESTED		
2/25	REREFERRED TO APPROPRIATIONS		
2/26	FISCAL NOTE PRINTED		
3/19	HEARING		
3/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/28	2ND READING PASSED AS AMENDED	79	15
3/28	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY		
3/28	3RD READING PASSED	77	21
	TRANSMITTED TO SENATE		
3/28	FIRST READING		
3/28	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
4/08	HEARING		
4/09	COMMITTEE REPORT—BILL CONCURRED		
4/11	2ND READING CONCURRED	31	13
4/12	3RD READING CONCURRED	32	17
	RETURNED TO HOUSE		
4/18	SIGNED BY SPEAKER		
4/19	SIGNED BY PRESIDENT		
4/19	TRANSMITTED TO GOVERNOR		
4/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 581	EFFECTIVE DATE: 4/23/91	

HB 369 INTRODUCED BY STICKNEY, ET AL.

APPROPRIATIONS TO SUPPORT AND EXPAND PUBLIC TELEVISION IN MONTANA

2/22	INTRODUCED		
2/22	REFERRED TO APPROPRIATIONS		
2/22	FIRST READING		
3/05	HEARING		
	DIED IN COMMITTEE		

HB 970 INTRODUCED BY COCCHIARELLA, ET AL.

GENERALLY REVISE TAX TREATMENT OF NEW AND EXPANDING INDUSTRIES

2/22	INTRODUCED		
2/22	REFERRED TO TAXATION		
2/22	FIRST READING		
2/22	FISCAL NOTE REQUESTED		
3/05	FISCAL NOTE RECEIVED		
3/05	FISCAL NOTE PRINTED		
3/20	HEARING		
3/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
4/03	2ND READING PASSED AS AMENDED	90	6
4/03	ON MOTION RULES SUSPENDED TO ALLOW 3RD READING THIS DAY		
4/03	3RD READING PASSED	93	7
	TRANSMITTED TO SENATE		
4/04	FIRST READING		
4/04	REFERRED TO TAXATION		
4/08	HEARING		
4/12	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		

4/19	SIGNED BY SPEAKER		
4/19	SIGNED BY PRESIDENT		
4/19	TRANSMITTED TO GOVERNOR		
4/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 588		
	EFFECTIVE DATE: 07/01/91 - SECTIONS 1, 4, 6-10		
	EFFECTIVE DATE: 01/01/92 - SECTIONS 2, 3, 5		

HB 965 INTRODUCED BY J. BROWN, ET AL.

PERMIT STATE AGENCIES TO SELL STATE PROPERTY AS A PART OF RECYCLING PROGRAMS

2/21	INTRODUCED		
2/21	REFERRED TO STATE ADMINISTRATION		
2/21	FIRST READING		
2/21	FISCAL NOTE REQUESTED		
2/27	FISCAL NOTE RECEIVED		
3/05	FISCAL NOTE PRINTED		
	DIED IN COMMITTEE		

HB 966 INTRODUCED BY STEPPLER, ET AL.

STUDY FUTURE OF GALEN AND WARM SPRINGS STATE HOSPITAL; SELECT COMMITTEE

2/21	INTRODUCED		
2/21	REFERRED TO STATE ADMINISTRATION		
2/21	FIRST READING		
3/06	HEARING		
3/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/18	2ND READING PASSED	87	0
3/20	3RD READING PASSED	91	7
	TRANSMITTED TO SENATE		
3/21	FIRST READING		
3/21	REFERRED TO FINANCE & CLAIMS		
3/26	HEARING		
3/27	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/03	2ND READING CONCURRED	34	14
4/04	3RD READING CONCURRED	36	14
	RETURNED TO HOUSE WITH AMENDMENTS		
4/10	2ND READING AMENDMENTS CONCURRED	97	1
4/11	3RD READING AMENDMENTS CONCURRED	98	0
4/17	SIGNED BY SPEAKER		
4/17	SIGNED BY PRESIDENT		
4/17	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 546		
	EFFECTIVE DATE: 04/22/91 - SECTIONS 1, 3		
	EFFECTIVE DATE: 07/01/91 - SECTION 2		

HB 967 INTRODUCED BY BRADLEY, ET AL.

APPROPRIATE FUNDS TO IMPLEMENT PEER FUNDING LEVELS FOR HIGHER EDUCATION

2/21	INTRODUCED		
2/21	REFERRED TO APPROPRIATIONS		
2/22	FIRST READING		
3/05	HEARING		
3/23	TABLED IN COMMITTEE		

HB 968 INTRODUCED BY BROOKE

AUTHORIZE DEPARTMENT OF HEALTH TO ADOPT A STANDARD MEANS OF IDENTIFICATION FOR PERSONS FOR WHOM A MEDICAL ORDER NOT TO PERFORM CPR EXISTS IN ORDER TO PREVENT THE APPLICATION OF LIFE-

HOUSE BILL NO. 968

INTRODUCED BY BROOKE

IN THE HOUSE

FEBRUARY 21, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 22, 1991	FIRST READING.
FEBRUARY 23, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 25, 1991	PRINTING REPORT.
	ON MOTION, TAKEN FROM SECOND READING AND REREFERRED TO THE COMMITTEE ON APPROPRIATIONS.
MARCH 25, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 26, 1991	PRINTING REPORT.
MARCH 28, 1991	SECOND READING, DO PASS AS AMENDED.
	ENGROSSING REPORT.
	ON MOTION, RULES SUSPENDED. BILL PLACED ON THIRD READING THIS DAY.
	THIRD READING, PASSED. AYES, 77; NOES, 21.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 28, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY.
	FIRST READING.
APRIL 9, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 11, 1991	SECOND READING, CONCURRED IN.
APRIL 12, 1991	THIRD READING, CONCURRED IN. AYES, 32; NOES, 17.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 13, 1991

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 968

INTRODUCED BY Ewalt

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT A STANDARD MEANS OF IDENTIFICATION FOR PERSONS FOR WHOM A MEDICAL ORDER NOT TO PERFORM CARDIOPULMONARY RESUSCITATION EXISTS IN ORDER TO PREVENT THE APPLICATION OF LIFE-SUSTAINING PROCEDURES; PROVIDING FOR CIVIL AND CRIMINAL IMMUNITY FOR HEALTH CARE PROFESSIONALS WITHHOLDING LIFE-SUSTAINING PROCEDURES PURSUANT TO A DO NOT RESUSCITATE ORDER OR TO PERSONS POSSESSING THE IDENTIFICATION; REQUIRING THE TRANSFER TO ANOTHER CAREGIVER UNDER CERTAIN CIRCUMSTANCES OF PATIENTS POSSESSING THE STANDARD IDENTIFICATION; REQUIRING EMERGENCY MEDICAL PERSONNEL OTHER THAN PHYSICIANS TO COMPLY WITH DO NOT RESUSCITATE ORDERS; PROVIDING FOR THE EFFECT ON INSURANCE POLICIES; REQUIRING THE DEPARTMENT TO ADOPT RULES; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 5] grants the department of health and environmental sciences authority to adopt rules implementing the bill. It is intended that the rules adopt by reference the board of medical examiners' do not resuscitate protocol and address, among other things, a standard form of statewide do not resuscitate identification, a form for a do not resuscitate order, training for emergency medical services personnel to inform them of the provisions of the bill and its implementing rules, and standards that emergency medical personnel shall follow when presented with do not resuscitate identification. It is also the intent of the legislature that the do not resuscitate identification adopted pursuant to this bill may be identical to that adopted pursuant to Title 50, chapter 9, and that the rules adopted pursuant to this bill may be correlated and intermingled with the rules adopted pursuant to 50-9-110.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Definitions. As used in [sections 1 through 6], unless the context clearly requires otherwise, the following definitions apply:

(1) "Attending physician" has the meaning provided in 50-9-102.

(2) "Board" means the state board of medical examiners.

(3) "Department" means the department of health and environmental sciences.

(4) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform

LC 0644/01

INTRODUCED BILL
HB 968

size and design, approved by the department, that signifies that the possessor has executed a declaration, as provided in 50-9-103, that has not been revoked or that the possessor's attending physician has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

(5) "Do not resuscitate order" means a directive from a licensed physician that emergency life-sustaining procedures should not be administered to a particular person.

(6) "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians and emergency medical services personnel.

(7) "Emergency medical services personnel" has the meaning provided in 50-9-102.

(8) "Health care facility" has the meaning provided in 50-5-101.

(9) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(10) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state.

(11) "Terminal condition" has the meaning provided in 50-9-102.

NEW SECTION. **Section 2.** Immunities. (1) The following are not subject to civil or criminal liability and are not guilty of unprofessional conduct upon discovery of DNR identification upon a person in a terminal condition:

(a) a physician who causes the withholding or withdrawal of life-sustaining procedure from that person;

(b) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures from that person;

(d) a health care facility in which withholding or withdrawal of life-sustaining procedures from that person occurs;

(e) physicians, persons under the direction or authorization of a physician, emergency medical services personnel, or health care facilities listed in subsections (1)(a) through (1)(d) that provide life-sustaining procedures pursuant to an oral or written request communicated to them by a person with a terminal condition who possesses DNR identification.

(2) The provisions of subsections (1)(a) through (1)(d) apply when a life-sustaining procedure is withheld or withdrawn in accordance with the do not resuscitate

protocol.

(3) Emergency medical services personnel who follow a do not resuscitate order are not subject to civil or criminal liability and are not guilty of unprofessional conduct.

NEW SECTION. **Section 3. Adherance to do not resuscitate protocol -- transfer of patients.** (1) Emergency medical services personnel other than physicians shall comply with the do not resuscitate protocol when presented with either do not resuscitate identification, an oral do not resuscitate order issued directly by a physician, or a written do not resuscitate order entered on a form prescribed by the department.

(2) An attending physician or a health care facility unwilling or unable to comply with the do not resuscitate protocol shall take all reasonable steps to transfer a person with a terminal condition possessing DNR identification to another physician or to a health care facility in which the do not resuscitate protocol will be followed.

NEW SECTION. **Section 4. Effect on insurance -- patient's decision.** (1) Death resulting from the withholding or withdrawal of emergency life-sustaining procedures pursuant to the do not resuscitate protocol and in accordance with [sections 1 through 6] is not, for any

purpose, a suicide or homicide.

(2) The possession of DNR identification pursuant to [sections 1 through 6] does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor does it modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of emergency life-sustaining procedures from an insured person possessing DNR identification, notwithstanding any term of the policy to the contrary.

(3) A physician, health care facility, or other health care provider and a health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan may not require a person to possess DNR identification as a condition for being insured for or receiving health care services.

(4) [Sections 1 through 6] do not create a presumption concerning the intention of an individual who does not possess DNR identification with respect to the use, withholding, or withdrawal of emergency life-sustaining procedures.

(5) [Sections 1 though 6] do not increase or decrease the right of a patient to make decisions regarding the use of emergency life-sustaining procedures if the patient is

able to do so, nor do [sections 1 through 6] impair or supersede any right or responsibility that a person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of [sections 1 through 6] are cumulative.

(6) [Sections 1 through 6] do not authorize or approve mercy killing.

NEW SECTION. **Section 5.** **Rulemaking authority.** (1) Upon the adoption of a do not resuscitate protocol by the board, the department may adopt a standard form of DNR identification to be used statewide.

(2) The department shall adopt rules to administer the provisions of [sections 1 through 6].

NEW SECTION. **Section 6.** **Penalties.** (1) A physician who willfully fails to transfer a patient in accordance with [section 3] is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(2) A person who purposely conceals, cancels, defaces, or obliterates the DNR identification of another without the consent of the possessor or who falsifies or forges a revocation of the DNR identification of another is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(3) A person who falsifies or forges the DNR identification of another or purposely conceals or withholds personal knowledge of a revocation of DNR identification with the intent to cause the use, withholding, or withdrawal of life-sustaining procedures is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

NEW SECTION. **Section 7.** **Effective date.** [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0968, second reading copy.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill authorizing the Department of Health and Environmental Sciences to adopt a standard means of identification for persons for whom a medical order not to perform cardiopulmonary resuscitation exists in order to prevent the application of life-sustaining procedures; providing for civil and criminal immunity for health care professionals withholding life-sustaining procedures pursuant to a "do not resuscitate" order or to persons possessing the identification; requiring the transfer to another caregiver under certain circumstances of patients possessing the standard identification; requiring emergency medical personnel other than physicians to comply with "do not resuscitate" orders; providing for the effect on insurance policies; and requiring the department to adopt rules and providing penalties.

ASSUMPTIONS:

1. The department will prepare and adopt rules and implement other provisions of the proposed bill within the $1,000 appropriation provided.

FISCAL IMPACT:

No additional.

ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

VIVIAN M. BROOKE, PRIMARY SPONSOR DATE

Fiscal Note for HB0968, second reading copy. HB 968

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 23, 1991, at 12:05 a.m.

ROLL CALL

Members Present:
- Bill Strizich, Chairman (D)
- Vivian Brooke, Vice-Chair (D)
- Arlene Becker (D)
- Dave Brown (D)
- Robert Clark (R)
- Paula Darko (D)
- Budd Gould (R)
- Royal Johnson (R)
- Vernon Keller (R)
- Charlotte Messmore (R)
- Linda Nelson (D)
- Jim Rice (R)
- Angela Russell (D)
- Jessica Stickney (D)
- Howard Toole (D)
- Tim Whalen (D)
- Diana Wyatt (D)

Members Excused: Rep. Boharski, Rep. Lee, and Rep. Measure

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB 968
AUTHORIZE DHES TO ADOPT AND ADMIN. DO NOT RESUSCITATE IDENT.

Presentation and Opening Statement by Sponsor:

REP. BROOKE, HOUSE DISTRICT 56, stated this bill gives the Department of Health the ability to adopt a standard means of identification for persons for whom a medical order not to perform cardiopulmonary resuscitation exists. A lot of this bill deals with medical language and standards that a department of health professional can address further.

Proponents' Testimony:

Drew Dawson, Chief of the emergency Medical Services Bureau - Department of Health and Environmental Sciences, gave written testimony in favor of HB 968. EXHIBIT 1

John Delano, Montana Medical Association, stated that the Association is in support of this bill.

Ira B. Byock MD, Chair - COMFORT ONE Task Force, gave written testimony in favor of HB 968. EXHIBIT 2

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor:

REP. BROOKE said there is an issue out there that needs to be addressed and these professionals have worked hard this interim and she encouraged the committee to support this measure.

EXECUTIVE ACTION ON HB 968

Motion: REP. BROOKE MOVED HB 968 DO PASS.

Motion: REP. BROOKE moved to amend HB 968. EXHIBIT 3

Discussion: REP. BROOKE stated the amendment provides for an appropriation in the sum of $1000 for education and publication of educational materials to help the department create some public awareness about this program. She encouraged the committee's support of this amendment.

Vote: Motion carried unanimously.

Motion: REP. BROOKE MOVED HB 968 DO PASS AS AMENDED.

Discussion: REP. WHALEN asked REP. BROOKE on page 3, line 5, there is a definition of resuscitate order, what input does this person have in the adoption of the order and where does it come from? REP. BROOKE said the order comes from the physician.

Mr. Dawson stated that it was his understanding that a Do Not Resuscitate Order is a joint decision made between the patient and the physician.

REP. TOOLE stated that it was his feeling that this bill is not limited to the terminally ill.

REP. JOHNSON stated these people appeared before the medical examiners board on two different occasions explaining their program and trying to tell us how they are going to put it into effect. At that time, we had a lot of drawings on the

paraphernalia that you would be able to use and it did include all the things previously discussed.

John MacMaster stated that he did not see anything in the bill that clearly says that the possessor has to accept a "Do Not Resuscitate" order issued. He suggested that on page 3, line 8, after the word "physician" insert "who has an" and then insert the same language found on page four lines 20 - 22.

REP. TOOLE stated that would limit this bill and application and all protection of medical care providers in situations where there is a request from the patient with a terminal condition.

REP. MESSMORE stated, "I reject this amendment".

REP. DARKO stated the committee needs to get this bill out and send it to another committee where there will be another hearing on this bill.

Motion/Vote: REP. GOULD moved to amend HB 968 on page 2, line 25, by adding "or tattoo". Motion carried unanimously.

Motion/Vote: REP. DARKO MOVED HB 968 DO PASS AS AMENDED. Motion carried 15 to 2 with Rep's: Whalen and Rice voting no.

EXECUTIVE ACTION ON HB 921

Motion: REP. DARKO MOVED TO RECONSIDER HB 921.

Discussion:

REP. DARKO stated that we have to authorize the placement of social security numbers of the statistical portion of the birth certificate in order to qualify for federal funds.

Vote: Motion failed.

ADJOURNMENT

Adjournment: 1:20 P.M.

BILL STRIZICH, Chair

JEANNE DOMME, Secretary

BS/jmd

JU022391.HM1

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 2-23-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI		/	
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE		/	
REP. BRUCE MEASURE		/	
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE STANDING COMMITTEE REPORT

February 23, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 968 (first reading copy -- white) do pass as amended .

Signed: _____
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 18.
Following: "PENALTIES;"
Insert: "PROVIDING FOR AN APPROPRIATION;"

2. Page 2, line 25.
Following: "necklace,"
Insert: "tattoo,"

3. Page 8.
Following: line 7
Insert: "NEW SECTION. Section 7. Appropriation. There is appropriated to the department of health the sum of $1,000 for the two fiscal years beginning July 1, 1991, to be used to publish and disseminate educational materials relating to [this act] for physicians, health care facilities, emergency medical services personnel, and others.
Renumber: subsequent section

EXHIBIT 1
DATE 2-23-91
HB 968

Mr. Chairman, members of the committee. I am Drew Dawson, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences.

When emergency medical services personnel respond to the scene of a patient who is not breathing and who has no pulse, it is a very emotional and difficult situation for both the family and the EMS personnel. Sometimes, when the death is anticipated, the patient and their physician have previously decided they do not wish the patient's life to be extended by the application of Cardiopulmonary Resuscitation (CPR). The EMS personnel are often faced with conflicting information at the scene by family and friends who are, understandably, quite upset.

During the 1989 legislature, the Montana Living Will Act was amended. Now, terminally ill patients who have declared living wills may wear a uniform, state-wide identification bracelet or card which signifies to EMS personnel that they are to follow procedures (a protocol) set forth by the Montana Board of Medical Examiners. This protocol, which is included with the testimony of Doctor Ira Byock, instructs the emergency care personnel to withhold cardiopulmonary resuscitation while placing emphasis on providing comforting, supporting care to the dying patient and their family. In fact, the entire program is called COMFORT ONE.

The Montana Hospice Association, the Montana Association of Home Health Agencies, the Montana Medical Association, the Montana Emergency Medical Services Association, the Department of Health and Environmental Sciences, have been working for two years to implement this COMFORT ONE program. However, we learned that the identification could be issued only to terminally ill patients who had declared a living will...not to patients for whom a physician had issued a Do Not Resuscitate Order...a standard medical practice. The EMS people are again caught in the middle; they hear conflicting stories from family members and friends, and attempt to determine if there is a valid physician's DNR order. In the heat of the moment, this is an almost impossible task.

This legislation simply allows this uniform identification to be issued to patients who have a valid DNR order in their medical chart and provides immunity to the EMS personnel who then follow the protocol. It also allows EMS personnel to follow a direct, verbal DNR order from a physician.

The intent is simple. When EMS personnel see this identification, they follow the standard, state-wide protocol already adopted by the Board of Medical Examiners. It provides a good mechanism for EMS personnel to follow to wishes of the patient and his physician. If they do not see the uniform identification, they follow their usual procedures and begin resuscitating the patient.

Due to short notice, the physicians who were instrumental in developing this legislation could not be here. However, I would be happy to answer questions.

Thank you.

EXHIBIT 2
DATE 2-23-91
HB 968

Honorable Vivian Brooke
Montana House of Representatives
Judiciary Committee

February 21, 1991

Members of the Judiciary Committee:

I wish to give testimony today in favor of HB ___, An Act authorizing the Department of Health and Environmental Sciences to adopt a standard means of identification for persons for whom a medical order not to perform cardiopulmonary resuscitation exists. Regrettably the abrupt scheduling of this hearing and the inflexibility of my own schedule prevents appearing in person to give testimony on this bill.

I am writing as Chair of the Living Will Protocol Task Force (now called **Comfort One** Task Force). This group, which is comprised of representatives of all relevant facets of Montana's health care community (physicians, emergency medical technicians, home health agencies, hospice programs and the DHES Emergency Medical Services Bureau chief) was formed by DHES and has been working since the end of the last legislative session to implement provisions of the Amended Living Will Act (previous HB 422) that address recognition of a qualified patient's living will declaration by emergency medical services (EMS) personnel. The resultant program and clinical EMS protocol has been given the term **COMFORT ONE.** This protocol has been prepared through a true consensus process addressing the concerns and incorporating the ideas of all those involved. The **COMFORT ONE** Protocol has been formally approved by the Board of Medical Examiners.

There are ordinarily very few situations in which prehospital providers may withhold or withdraw CPR. Except for obvious signs of death (such as rigor mortis, pooling of body fluids, decomposition, decapitation, etc) or the exhaustion of rescuers conducting CPR, EMTs can cease efforts only when a physician assumes control of the case or on presentation of a written, physician's DNR order - as might occur on arrival at a hospital or at a nursing home.

In 1989 HB 422, which amended Montana's Living Will Act, broke new ground by creation of the entity of "reliable documentation". This created a clear, all or none, mechanism for prehospital providers to know whether or not the a living will had been signed and, if so, whether the necessary qualifying terminal condition for the living will had been certified by a physician.

The Task Force charged with drafting implementing Rules and an EMS clinical protocol for this legislation recognized the importance of providing EMS personnel at the scene with a means of knowing **immediately** and **unequivocally** whether or not to begin cardiopulmonary resuscitation. Within the Rules "reliable documentation" was made synonymous with the term **COMFORT ONE** as presented in a standardized logo within a standardized form or identification jewelry. The Rules were formally noticed and hearings were held in several cities.

After the Rules had been approved it became apparent that the Task Force, and, by extension DHES, had inadvertently gone beyond its Rule-making authority by

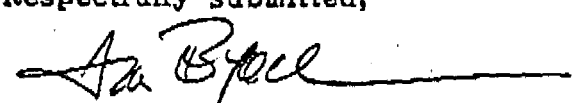
Ex. 2
2-23-91
HB 968

including provisions for issuing **COMFORT ONE** certification to patients on the basis of a written do not resuscitate (DNR) order of a licensed physician. While legal counsel for DHES and the Board of Medical Examiners reaffirmed the propriety of EMS personnel honoring a written physician's DNR order at the scene, the Task Force continues to strive to provide a consolidated, prospective means of identifying patients for whom CPR is to be avoided.

The current legislation is necessary to allow implementation of the **COMFORT ONE** program as it has been approved in hearings on the Rules (now rescinded) and as approved as an EMS protocol by the Board of Medical Examiners. The Bill before the Committee does not extend the program beyond what has been approved with the exception of adopting the **COMFORT ONE** credentials (under development by DHES) as the standardized format for written physician DNR orders to be complied with in the non-institutional setting.

The **COMFORT ONE** program represents an innovative strategy that effectively addresses a problem that has long plagued EMS and hospice care providers - and the patients and families they serve. The Task Force, and the multiple component groups it represents, is anxious to proceed with development of educational programs and materials to implement **COMFORT ONE**. After three years of discussion and evolution the current legislation will enable the promise of this important program to be realized.

Respectfully submitted,



Ira R. Byock, MD, FACEP
Chair **COMFORT ONE** Task Force

341 University Ave.
Missoula, MT 59801

COMFORT ONE protocol
Appendix A

DATE 2-23-91
HB 968

Amendments to House Bill No. 968
First Reading Copy

Requested by Rep. Brooke
For the Committee on the Judiciary

Prepared by John MacMaste
February 22, 1991

1. Title, line 18.
Following: "PENALTIES;"
Insert: "PROVIDING FOR AN APPROPRIATION;"

2. Page 8.
Following: line 7
Insert: "NEW SECTION. Section 7. Appropriation. There is appropriated to the department of health the sum of $1,000 for the two fiscal years beginning July 1, 1991, to be used to publish and disseminate educational materials relating to [this act] for physicians, health care facilities, emergency medical services personnel, and others.
Renumber: subsequent section

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 968

TE 2-23-91 SPONSOR(S) Vivian Brooke

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ellie Parker, Helena	DHES	✓	
Drew Dawson, Boulder	DHES	✓	
John Delano	MMA	X	
Rep Royal Johnson	HD 88	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By Chairman Bardanouve, on March 19, 1991, at 8 a.m.

ROLL CALL

Members Present:

Francis Bardanouve, Chairman (D)
Ray Peck, Vice-Chairman (D)
Dorothy Bradley (D)
John Cobb (R)
Dorothy Cody (D)
Mary Ellen Connelly (D)
Ed Grady (R)
Larry Grinde (R)
John Johnson (D)
Mike Kadas (D)
Berv Kimberley (D)
Wm. "Red" Menahan (D)
Jerry Nisbet (D)
Mary Lou Peterson (R)
Joe Quilici (D)
Chuck Swysgood (R)
Bob Thoft (R)
Tom Zook (R)

Staff Present: Terry Cohea, Legislative Fiscal Analyst
Jim Haubein, Principal Fiscal Analyst
Sylvia Kinsey, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Note: The Chair was shared with Rep. Peck, Vice Chair, and no note of when changes were made is in the minutes since it was alternated frequently.

EXHIBITS A AND B were prepared by the LFA and list the scheduled bills plus comments on the bill.

HEARING ON HOUSE BILL 968

Presentation and Opening Statement by Sponsor:

Authorize DHES to Adopt and Administer Do Not Resuscitate Identification.

REP. BROOKE, House District 56, Missoula, said last session we gave DHES the rulemaking authority to set up a program and a protocol which they have done called Comfort I, which is a program to exempt Emergency Technicians from Liability and to have a piece of jewelry on the person if they have a living will in place. The EMT would then deny that person cardiopulmonary resuscitation. The $1,000 has been amended into the bill and if the committee finds it is not necessary she felt the Department could find a way of implementing the bill.

Proponents' Testimony: **Drew Dawson, Chief, Emergency Medical Services Bureau, DHES,** spoke in favor of HB 968 and submitted written testimony, **EXHIBIT 1.**

The hearing on HB 968 was closed.

HEARING ON HOUSE BILL 696

Increase and Extend Funding for Statewide Genetics Program

Presentation and Opening Statement by Sponsor:

REP. JIM RICE, District 43, Helena, explained his bill as a continuation of the Statewide Genetics Program. Rather than having witnesses, he showed a brief video tape. In most states this particular program is handled through their medical school. Montana has an alternative funding system which is probably the biggest source of controversy on funding this program. The funding is an assessment upon the health insurance policies that are secured by Montana citizens and is paid as a part of their premium, 45 cents per year and they are asking in this bill to raise that amount to 75 cents. A large part of this program is being underwritten by Shodair Hospital and due to economic hard times they cannot continue to underwrite the costs.

Proponents' Testimony: **Jack Casey, Administrator, Shodair Hospital,** said last June SRS changed the way they did business on the in-patient side of the psychiatric services at Shodair through utilization review. The review is done by a firm out of Tennessee and they determine whether or not medicaid is going to pay for in-patient psychiatric services. They have differed with those folks on many folks coming through Shodair, and rather than discharge the child they keep them until they feel they are able to be discharged so they can benefit maximally from the program. In doing this they have provided charitable care in excess of $847,000 through January of this year. This leaves them short in the foundation and the sharing of the responsibility of the Board of Trustees over the foundation is such that they cannot invade the corpus. They are faced with the problem now of being able to fund that program and the in-patient programs at Shodair.

Jim Erin, President, Montana Hospital Association, said this bill is of assistance to all the hospitals and urged support.

HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL DATE 3-19-91

NAME	PRESENT	ABSENT	EXCUSED
REP. FRANCIS BARDANOUVE, CHAIRMAN	✓		
REP. RAY PECK, VICE-CHAIRMAN	✓		
REP. DOROTHY BRADLEY	✓		
REP. JOHN COBB	✓		
REP. DOROTHY CODY	✓		
REP. MARY ELLEN CONNELLY	✓		
REP. ED GRADY	✓		
REP. LARRY GRINDE	✓		
REP. JOHN JOHNSON	✓		
REP. MIKE KADAS	✓		
REP. BERV KIMBERLEY	✓		
REP. WM. "RED" MENAHAN	✓		
REP. JERRY NISBET	✓		
REP. MARY LOU PETERSON	✓		
REP. JOE QUILICI	✓		
REP. CHUCK SWYSGOOD	✓		
REP. BOB THOFT	✓		
REP. TOM ZOOK	✓		

that were approved by this committee. If you reduce the fees we will have to look at funding for some of the mods that were put in the budget. **REP. GRADY** asked to segregate the amendment and not act on the fee since it could be done on the floor if necessary. We could pass it as it is and amend it on the floor.

REP. NISBET withdrew his motion. **REP. KADAS** suggested do not change the fee, but do adopt the second part of the amendment.

Motion to Amend/Vote: **REP. NISBET** moved No. 2 on the amendment, **EXHIBIT 19**, page 10 line 16. Second by Rep. Cody. Motion passed unanimously

Motion/Vote: **REP. GRADY** moved HB 964 as amended do pass. Second by Rep. Nisbet. Motion passed 12 to 5 with Rep. Quilici absent and Rep. Swysgood, Peck, Thoft, Grinde and Cobb voting no.

EXECUTIVE ACTION ON HB 967

Appropriate Funds to Implement Peer Funding Levels for Higher Education

Motion: **REP. BRADLEY** moved HB 967 do pass. Second by Rep. Nisbet.

Discussion: **REP. BRADLEY** said she was in an awkward position on this bill because she argued it without reading the title on the previous page and doesn't know whether to re-argue it or argue the previous one we killed.

REP. KADAS said he introduced a bill today that essentially does what **REP. BRADLEY** is trying to do but takes into account what we have done thus far in the session and it also has a revenue source behind it so it would not be impacting the general fund.

?????motion....
Motion/Vote: Second by Rep. Nisbet. Motion failed 5 to 13 with all members **except** Rep. Bradley, Connelly, Menahan, Nisbet and Quilici voting no.

Motion/Vote: **REP. PECK** moved HB 967 be tabled. Second by Rep. Thoft. Motion passed 13 to 5 with Rep. Bradley, Connelly, Quilici, Nisbet and Menahan voting no.

EXECUTIVE ACTION ON HB 968

Authorize DHES to Adopt and Administer Do Not Resuscitate Identification

Motion: **REP. KADAS** moved HB 968 do pass. Second by Rep. Nisbet.

Motion to Amend: **REP. KADAS** moved to amend HB 968 Title, line 19 and page 8 lines 9 through 14, **EXHIBIT 20.** Second by Rep. Nisbet.

Discussion: **REP. KADAS** said this removes the appropriation. It eliminates section 7. **CHAIRMAN BARDANOUVE** asked if this implements a new program and **REP. CONNELLY** said all this does is send out information. **REP. KADAS** said he did not think they would ask for funding next time since they added the appropriation into the bill. **REP. BROOKE** said she does not need the appropriation because this bill was about to die on the 44th day and it has been in the process of writing and rewriting and was a very difficult draft since it tries to implement a lot of medical standards of practice into a code. It implements a program so emergency medical technicians cannot use cardio pulmonary resuscitation on people if the person has a do not resuscitate order or had in existence a living will. The program has already been put into place, it just needs the implementing language and the authorization from the Legislature that the DHES can now do this.

Vote: Motion to amend passed 16 to 1 with Rep. Quilici absent and Rep. Peterson voting no.

Motion/Vote: **REP. KADAS** moved HB 968, as amended do pass. Second by Rep. Nisbet. Motion passed 11 to 6 with Rep. Quilici absent and Rep. Peterson, Peck, Thoft, Swysgood, Grady, and Grinde voting no.

EXECUTIVE ACTION ON HB 969

Appropriations to Support and Expand Public Television in Montana

Motion: **REP. MENAHAN** moved HB 969 do pass. Second by Rep. Nisbet.

Substitute Motion/Vote: **REP. THOFT** moved HB 969 be tabled. Second by Rep. Zook. Motion failed on a tie vote, roll call vote # 16.

Discussion: **REP. BRADLEY** asked **REP. PECK** how much general fund was in his bill and **REP. SWYSGOOD** said $890,000. **REP. PECK** said when all totaled, participation by public schools, university and the general public, the appropriation was $890,000. **REP. BRADLEY** asked if this was almost contemplated as being a companion piece because a lot of the instructional and educational programming that will take place over your network will come out of the cooperation of this system? **REP. PECK** said no. HB 30 was far ahead of this bill, this bill was introduced later. **REP. BRADLEY** asked if some of the programming would come out of this endeavor? **REP. PECK** said not to his knowledge, but it was a possibility. **REP. BRADLEY** asked if this would not compliment it and **REP. PECK** said he supposed the sponsor would suggest that and he had signed the bill because it had some beneficial qualifications to HB 30, but would not stretch it to say that HB 30 needs this bill. **REP. BRADLEY** said she felt one of the most important things about this bill was on page 4 that not a dollar will be spent out of this fund until it has a permanent match dollar for dollar.

HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL DATE 3-23-91

NAME	PRESENT	ABSENT	EXCUSED
REP. FRANCIS BARDANOUVE, CHAIRMAN	✓		
REP. RAY PECK, VICE-CHAIRMAN	✓		
REP. DOROTHY BRADLEY	✓		
REP. JOHN COBB	✓		
REP. DOROTHY CODY	✓		
REP. MARY ELLEN CONNELLY	✓		
REP. ED GRADY	✓		
REP. LARRY GRINDE	✓		
REP. JOHN JOHNSON	✓		
REP. MIKE KADAS	✓		
REP. BERV KIMBERLEY	✓		
REP. WM. "RED" MENAHAN	✓		
REP. JERRY NISBET	✓		
REP. MARY LOU PETERSON	✓		
REP. JOE QUILICI	✓		
REP. CHUCK SWYSGOOD	✓		
REP. BOB THOFT	✓		
REP. TOM ZOOK	✓		

HOUSE STANDING COMMITTEE REPORT

March 25, 1991

Mr. Speaker: We, the committee on Appropriations report that House Bill 968 (second reading copy -- yellow) do pass as amended .

Signed: _____
Francis Bardanouve, Chairman

And, that such amendments read:
1. Title, line 19.
Strike: "PROVIDING FOR AN APPROPRIATION;"

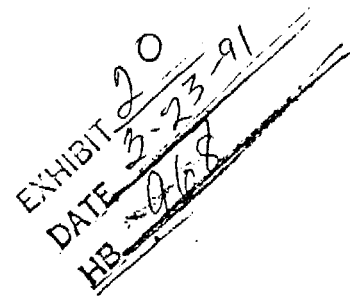
2. Page 8, lines 9 through 14.
Strike: section 7 in its entirety
Renumber: subsequent section

Amendments to House Bill No. 968

Second Reading Copy

Requested by Representative Brooke
For the Committee on Appropriations

Prepared by Greg Petesch
March 21, 1991



1. Title, line 19.
Strike: "PROVIDING FOR AN APPROPRIATION;"

2. Page 8, lines 9 through 14.
Strike: section 7 in its entirety
Renumber: subsequent section

HEARING ON HOUSE BILL 968

Presentation and Opening Statement by Sponsor:

Representative Vivian Brooke, House District 56, stated that HB 968 previously had an appropriation but that was stricken. HB 968 was instituted by HB 422 in 1989 session to enact the living will protocol for emergency medical technicians. HB 968 gives the Department of Health that authority to continue the program.

Proponents' Testimony:

IRA BYOCK, M.D., advised that this bill is in a sense a housekeeping bill to enable the Department of Health and Environmental Sciences to go forward with a plan and a protocol for emergency medical services personnel as it was initially conceived almost three years ago. Dr. Byock submitted written testimony to the committee (Exhibit #5).

DREW DAWSON, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences, read and presented copies of his testimony to committee members, and also included a fact sheet (Exhibit #6).

JIM AHERNS, Montana Hospital Association, stated that group would like to go on record as being in support of this legislation.

HANK HUDSON, Governor's Office on Aging, advised that Mr. Dawson worked with them and kept them informed of the progress of HB 968. He stated they have been supportive of this legislation in the past and currently support it.

JERRY LOENDORF, representing Montana Medical Association, stated that in addition to the testimony already given, in reviewing the bill and comparing it to the Living Will Act, it showed that Sections 2, 3 and 4, which are really the substance of the bill, are essentially the same as those provisions in the Living Will Act.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Towe asked Mr. Loendorf if those were the same sections passed this session. Mr. Loendorf said they were not, indicating 50-9-204 corresponds to Section 2; 50-9-203 corresponds to Subsection 2 of Section 3; and 50-9-205

corresponds to Subsection 4. Senator Towe asked if these are now duplicative to which Mr. Loendorf responded in the sense that they are the same, but these particular provisions, for example the immunity provisions, refer to the situation presented in this bill, for example relying on the DNR identification bracelet as opposed to the living will. According to Dr. Byock, this bill enables an alternative mechanism of initiating the same protocol and with the similar immunities.

Senator Hager asked Representative Brooke why the language was added and then removed to have a tatoo as the means of identifying persons. She advised that was an idea of Representative Gould during the House Judiciary hearing. He thought that would be a better alternative than the jewelry, but after consulting with Mr. Dawson was amenable to having that deleted simply because the jewelry allows for someone to change their mind.

Chairman Eck commented that Beth Suhr called to express concern about the revocation Section 3 (2). Her concern was that even though the patient and the physician may have agreed, the doctor in the emergency room may be unwilling to comply. Dr. Byock stated he had talked to Ms. Suhr about the revocation issue, and her concern as expressed to him has been that a revocation should only come from the patient and not be affected by anybody, including the attending physician. His answer to her was that in a real-life medical setting the attending physician gives orders to EMTs and nurses which they really need to obey, and at times if the physician, rightly or wrongly, wishes to exercise that control and institute a therapy which in retrospect may have violated the patient's living will or previously arranged DNR order, it would be very hazardous to put the EMTs and nurses in a position to having be in conflict with that physician. Physicians can be sued for the effects of their actions, but the subordinates have been immunized.

Senator Towe and Dr. Byock discussed the various types of revocations.

Senator Hager referred to the effect on insurance section and he wondered if this had been run by the insurance companies. He indicated it could have an effect on the person's life or disability insurance. Representative Brooke advised that she has not talked directly to any insurance people, nor have they contacted her in the course of this bill.

Dr. Byock advised that this bill does nothing innovative from the point of view of expanding people's rights or standard medical care, with the exception of enabling them to occur in an out of hospital setting. The DNR orders are a standard medical procedure and living wills have become standard accepted medical practice and guidelines. He stated it is not clear if this is in any way changing the situation.

In response to questions by Senator Towe regarding health and life insurance covering persons with living wills, Hank Hudson advised that the purpose of the language in the original living will bill was to prevent insurance companies from denying life insurance benefits to people based on the interpretation of possibly committing suicide.

Senator Rye pointed out that the applicability would be limited because most suicide clauses in standard policies are only in effect for about two years after the policy is taken out.

Chairman Eck asked if someone would address the reason for the language stricken that says "with a terminal condition". Dr. Byock advised that was to correct an error in drafting. As previously mentioned, sections of this were taken from the Living Will Act and inserted basically verbatim, and the definition of "terminal illness" in the statute is fairly restrictive and is inapplicable in this particular setting. There are people who do not meet the definition of a terminal illness who may legitimately obtain a DNR order from their physicians.

Closing by Sponsor:

Representative Brooke thanked the committee for a good hearing, and stated she appreciated the fact they took the time to look at this bill carefully. She urged a do concur on House Bill 968.

EXECUTIVE ACTION ON HOUSE BILL 968

Motion:

Senator Towe moved concurrence.

Discussion:

None.

Recommendation and Vote:

There being 7 ayes and 1 nay by Senator Hager the motion carried.

HEARING ON HOUSE BILL 978

Presentation and Opening Statement by Sponsor:

Representative John Phillips, District 33, advised that HB 978 is a simple bill which asks the Department of Social and Rehabilitation Services to apply for a waiver from the federal government to commence a personal care pilot program. SRS would need funding to implement the program.

ROLL CALL

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

Date 04/08/91

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BURNETT	X		
SENATOR FRANKLIN	X		
SENATOR HAGER	X		
SENATOR JACOBSON	X		
SENATOR PIPINICH	X		
SENATOR RYE	X		
SENATOR TOWE	X		
SENATOR ECK	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

April 9, 1991

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 968 (third reading copy -- blue), respectfully report that House Bill No. 968 be concurred in.

Signed: _____
Dorothy Eck, Chairman

LB 1191
Amd. Coord.

Sec. of Senate

SENATE HEALTH & WELFARE
EXHIBIT NO. 5
DATE 4/8
HBILL NO. 968

Montana Senate
Public Health, Welfare and Safety Committee
Testimony regarding HB 968
Ira R. Byock, MD, FACEP

April 8, 1991

I wish to give testimony today in favor of HB 968, An Act authorizing the Department of Health and Environmental Sciences to adopt a standard means of identification for persons for whom a medical order not to perform cardiopulmonary resuscitation exists.

I am testifying as Chair of the Living Will Protocol Task Force (now called Comfort One Task Force). This group, which is comprised of representatives of all relevant facets of Montana's health care community (physicians, emergency medical technicians, home health agencies, hospice programs and the DHES Emergency Medical Services Bureau chief) was formed by DHES and has been working since the end of the last legislative session to implement provisions of the Amended Living Will Act (previous HB 422) that address recognition of a qualified patient's living will declaration by emergency medical services (EMS) personnel. The resultant program and clinical EMS protocol has been given the term COMFORT ONE. This protocol has been prepared through a true consensus process addressing the concerns and incorporating the ideas of all those involved. The COMFORT ONE Protocol has been formally approved by the Board of Medical Examiners.

There are ordinarily very few situations in which prehospital providers may withhold or withdraw CPR. Except for obvious signs of death (such as rigor mortis, pooling of body fluids, decomposition, decapitation, etc) or the exhaustion of rescuers conducting CPR, EMTs can cease efforts only when a physician assumes control of the case or on presentation of a written, physician's DNR order - as might occur on arrival at a hospital or at a nursing home.

In 1989 HB 422, which amended Montana's Living Will Act, broke new ground by creation of the entity of "reliable documentation". This created a clear, all or none, mechanism for prehospital providers to know whether or not the a living will had been signed and, if so, whether the necessary qualifying terminal condition for the living will had been certified by a physician.

The Task Force charged with drafting implementing Rules and an EMS clinical protocol for this legislation recognized the importance of providing EMS personnel at the scene with a means of knowing **immediately** and **unequivocally** whether or not to begin cardiopulmonary resuscitation. Within the Rules "reliable documentation" was made synonymous with the term **COMFORT ONE** as presented in a standardized logo within a standardized form or identification jewelry. The Rules were formally noticed and hearings were held in several cities.

Ex. 5
4/8/91
HB 968

After the Rules had been approved it became apparent that the Task Force, and, by extension DHES, had inadvertently gone beyond its Rule-making authority by including provisions for issuing **COMFORT ONE** certification to patients on the basis of a written do not resuscitate (DNR) order of a licensed physician. While legal counsel for DHES and the Board of Medical Examiners reaffirmed the propriety of EMS personnel honoring a written physician's DNR order at the scene, the Task Force continues to strive to provide a consolidated, prospective means of identifying patients for whom CPR is to be avoided.

The current legislation is necessary to allow implementation of the **COMFORT ONE** program as it has been approved in hearings on the Rules (now rescinded) and as approved as an EMS protocol by the Board of Medical Examiners. The Bill before the Committee does not extend the program beyond what has been approved with the exception of adopting the **COMFORT ONE** credentials (under development by DHES) as the standardized format for written physician DNR orders to be complied with in the non-institutional setting.

The **COMFORT ONE** program represents an innovative strategy that effectively addresses a problem that has long plagued EMS and hospice care providers - and the patients and families they serve. The Task Force, and the multiple component groups it represents, is anxious to proceed with development of educational programs and materials to implement **COMFORT ONE.** After three years of discussion and evolution the current legislation will enable the promise of this important program to be realized.

Respectfully submitted,

Ira R. Byock, MD, FACEP
Chair **COMFORT ONE** Task Force

341 University Ave.
Missoula, MT 59801

SENATE HEALTH & WELFARE
EXHIBIT NO. 6
DATE 4/8
H BILL NO. 968

HOUSE BILL 968

Madam Chair, members of the committee. I am Drew Dawson, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences.

When emergency medical services personnel respond to the scene of a patient who is not breathing and who has no pulse, it is a very emotional and difficult situation for both the family and the EMS personnel. Sometimes, when the death is anticipated, the patient and their physician have previously decided they do not wish the patient's life to be extended by the application of Cardiopulmonary Resuscitation (CPR). The EMS personnel are often faced with conflicting information at the scene by family and friends who are, understandably, quite upset.

During the 1989 legislature, the Montana Living Will Act was amended. Now, terminally ill patients who have declared living wills may wear a uniform, state-wide identification bracelet or card which signifies to EMS personnel that they are to follow procedures (a protocol) set forth by the Montana Board of Medical Examiners. This protocol instructs the emergency care personnel to withhold cardiopulmonary resuscitation while placing emphasis on providing comforting, supporting care to the dying patient and their family. In fact, the entire program is called **COMFORT ONE**.

The Montana Hospice Association, the Montana Association of Home Health Agencies, the Montana Medical Association, the Montana Emergency Medical Services Association, and the Department of Health and Environmental Sciences, have been working for two years to implement this **COMFORT ONE** program. However, we learned that the identification could be issued <u>only</u> to terminally ill patients who had declared a living will...<u>not</u> to patients for whom a physician had issued a Do Not Resuscitate Order...a standard medical practice. The EMS people are again caught in the middle; they hear conflicting stories from family members and friends, and attempt to determine if there is a valid physician's DNR order. In the heat of the moment, this is an almost impossible task.

This legislation simply allows this uniform identification to be issued to patients who have a valid DNR order in their medical chart and provides immunity to the personnel who then follow the protocol. It also allows EMS personnel to follow a direct, verbal DNR order from a physician.

The intent is simple. When EMS personnel see this identification, they follow the standard, state-wide protocol already adopted by the Board of Medical Examiners. It provides a good mechanism for EMS personnel to follow the wishes of the patient and his physician. If they do not see the uniform identification, they follow their usual procedures and begin resuscitating the patient.

I would be happy to respond to any questions.

Thank you.

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date 04/08/91 H Bill No. 968 Time 5:45 p.m.

NAME	YES	NO
SENATOR BURNETT	X	
SENATOR FRANKLIN	X	
SENATOR HAGER		X
SENATORJACOBSON	X	
SENATOR PIPINICH	X	
SENATOR RYE	X	
SENATOR TOWE	X	
SENATOR ECK	X	

Secretary Chairman

Motion: Senator Towe moved concurrence. There being 7 ayes and 1 nay the motion carried.

1987

DATE 4-8-91

COMMITTEE ON Senate Public Health, Welfare & Safety

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
[illegible]	MT. Medical Assn	HB968	✓	
[illegible]	D Family Dr	HB937		
Robert W. Olsen	MT Hospital Assoc	HB977	✓	
Robert W. Olsen	MT Hospital Assoc	HB968	✓	
Drew Dawson	EMS, Dept Health	HB968	✓	
Mike Craig	DFES			
J Casey	Sheridan	HB977	✓	
Ada Byock MD	CHAIR COMMUNITY ONE TASK FORCE	HB968	✓	
Kate Cholewa	MT Womens Lobby	937	✓	

(Please leave prepared statement with Secretary)